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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,026	03/02/2004	Richard Leone	L537.12-0001	1377
164 7590 01/09/2009 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002				
EXAMINER CASTELLANO, STEPHEN J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
01/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/792,026

Applicant(s)

LEONE, RICHARD

Examiner

/Stephen J. Castellano/

Art Unit

3781

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 10, 11 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 11 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 6-9 and 12-15 have been canceled. Claims 1-5, 10-11 and 16-21 are pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10-11 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by West (1061431).

West discloses a baking tray for baking food on a stick or skewer, the tray comprising a generally planar horizontal base (base A), a connector (one of the portions that extends from eye B to bend E), the first end of the connector is connected to the end of the base at a first bend and the connector and base form an acute angle, a generally angled support (one or both of the inverted V shaped portions that extend up from bend E to a peak of the inverted V shape then back down to the eye B, the first end of the support is connected to the second end of the connector at a second bend, the support slopes above the connector, apertures on the support are formed by hooks D.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over West.

West discloses the planar horizontal base, the first planar surface is equivalent to the connector and the inverted V-shaped support has planar surfaces equivalent to the second and

third planar surfaces. West discloses the invention except for the connector may not be shaped such that it has a planar surface if the wire forming the connector has a circular cross section. Official notice is taken that flat or planar wire is well known. It would have been obvious to modify round cross section wire to flat or planar as a matter of design choice in choosing a wire cross section that aspires to a person for aesthetically pleasing appearance reasons by having flat or planar sides.

Re claims 20-21, the third planar surface must have apertures. It would have been obvious to use the teaching of the hooks on the second planar surface and add hooks D to the third planar surface to provide additional areas of support for forks, sticks or skewers to add to the functionality by increasing the capacity for stick or skewer holding which increases cooking capacity.

Claims 1-5, 10-11 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sculcu (7107898) in view of Untiedt (5390453).

Sculcu discloses the tray including the base and the angled support. Sculcu fails to disclose the connector. Untiedt teaches a base (18) and a connector that angles upwardly at an acute angle. It would have been obvious to add the connector to any of the edges of the tray between the base and the cooking surface or angled support of Sculcu to space the cooking surface or angled support from the base to raise the cooking surface from flame or intense heat. Alternatively, it would have been obvious to replace the full width base of Sculcu with the base and connector of Untiedt for the reasons of (1) spacing the angled support away from flame or intense heat or (2) to provide a base with less material than a full width base.

Claims 1-5, 10-11 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baze (5628245) in view of Untiedt (5390453).

Baze discloses the tray including an angled support. Baze fails to disclose the connector and the base below the connector. Untiedt teaches a base (18) and a connector that angles upwardly at an acute angle. It would have been obvious to add the base and connector to any of the edges of the tray between the base and the cooking surface or angled support of Baze to space the cooking surface or angled support from the base to raise the cooking surface from flame or intense heat.

Applicant's arguments with respect to claims 1-5, 10-11 and 16-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc